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PAID LEAVE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill requires certain state employers to offer paid parental leave and postpartum recovery leave.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain state employers to provide certain employees paid parental leave

upon:

- the birth of the employee's child;
- the adoption of a minor child; or
- the appointment of legal guardianship of a minor child;

▶ requires certain state employers to provide certain employees paid postpartum recovery leave following childbirth;

▶ requires the Department of Human Resource Management to adopt rules to administer parental leave and postpartum recovery leave; and

▶ allows the Department of Administrative Services to transfer certain money for the costs of parental leave and postpartum recovery leave.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2021:

- ▶ to the Department of Administrative Services -- Finance Mandated Paid Parental



28 Leave -- Paid Parental Leave, as on ongoing appropriation:

- 29 • from the General Fund, \$2,287,152.

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63J-1-206**, as last amended by Laws of Utah 2019, Chapters 182 and 468

35 ENACTS:

36 **67-19-14.7**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **63J-1-206** is amended to read:

40 **63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures --**
41 **Transfer of funds -- Exclusion.**

42 (1) (a) Except as provided in Subsections (1)(b) and (2)(e), or where expressly
43 exempted in the appropriating act:

44 (i) all money appropriated by the Legislature is appropriated upon the terms and
45 conditions set forth in this chapter; and

46 (ii) any department, agency, or institution that accepts money appropriated by the
47 Legislature does so subject to the requirements of this chapter.

48 (b) This section does not apply to:

49 (i) the Legislature and its committees; and

50 (ii) the Investigation Account of the Water Resources Construction Fund, which is
51 governed by Section **73-10-8**.

52 (2) (a) Each item of appropriation is to be expended subject to any schedule of
53 programs and any restriction attached to the item of appropriation, as designated by the
54 Legislature.

55 (b) Each schedule of programs or restriction attached to an appropriation item:

56 (i) is a restriction or limitation upon the expenditure of the respective appropriation
57 made;

58 (ii) does not itself appropriate any money; and

59 (iii) is not itself an item of appropriation.

60 (c) (i) Except as provided in [~~Subsection~~] Subsections (2)(c)(ii) and (iii), an
61 appropriation or any surplus of any appropriation may not be diverted from any department,
62 agency, institution, division, or line item to any other department, agency, institution, division,
63 or line item.

64 (ii) The state superintendent may transfer money appropriated for the Minimum School
65 Program between line items in accordance with Section [53F-2-205](#).

66 (iii) The Department of Administrative Services may transfer money appropriated for
67 the purpose of paying the costs of paid employee parental leave and postpartum recovery leave
68 under Section [67-19-14.7](#) to another department, agency, institution, or division.

69 ~~[(iii)]~~ (iv) If the money appropriated to an agency to pay lease payments under the
70 program established in Subsection [63A-5-228\(3\)](#) exceeds the amount required for the agency's
71 lease payments to the Division of Facilities Construction and Management, the agency may:

72 (A) transfer money from the lease payments line item to other line items within the
73 agency; and

74 (B) retain and use the excess money for other purposes.

75 (d) The money appropriated subject to a schedule of programs or restriction may be
76 used only for the purposes authorized.

77 (e) In order for a department, agency, or institution to transfer money appropriated to it
78 from one program to another program within a line item, the department, agency, or institution
79 shall revise its budget execution plan as provided in Section [63J-1-209](#).

80 (f) (i) The procedures for transferring money between programs within a line item as
81 provided by Subsection (2)(e) do not apply to money appropriated to the State Board of
82 Education for the Minimum School Program or capital outlay programs created in Title 53F,
83 Chapter 3, State Funding -- Capital Outlay Programs.

84 (ii) The state superintendent may transfer money appropriated for the programs
85 specified in Subsection (2)(f)(i) only as provided by Section [53F-2-205](#).

86 Section 2. Section [67-19-14.7](#) is enacted to read:

87 **[67-19-14.7. Parental leave -- Postpartum recovery leave.](#)**

88 **(1) As used in this section:**

89 **(a) "Parental leave" means leave hours a state employer provides to a parental leave**

90 eligible employee.

91 (b) "Parental leave eligible employee" means an employee who:

92 (i) is in a position that receives retirement benefits under Title 49, Utah State

93 Retirement and Insurance Benefit Act;

94 (ii) accrues paid leave benefits that can be used in the current and future calendar years;

95 (iii) is not reemployed as defined in Section [49-11-1202](#); and

96 (iv) (A) is a birth parent as defined in Section [78B-6-103](#);

97 (B) legally adopts a minor child, unless the individual is the spouse of the pre-existing

98 parent;

99 (C) is the intended parent of a child born under a validated gestational agreement in

100 accordance with Title 78B, Chapter 15, Part 8, Gestational Agreement; or

101 (D) is appointed the legal guardian of a minor child.

102 (c) "Postpartum recovery leave" means leave hours a state employer provides to a
103 postpartum recovery leave eligible employee.

104 (d) "Postpartum recovery leave eligible employee" means an employee who:

105 (i) is in a position that receives retirement benefits under Title 49, Utah State

106 Retirement and Insurance Benefit Act;

107 (ii) accrues paid leave benefits that can be used in the current and future calendar years;

108 (iii) is not reemployed as defined in Section [49-11-1202](#); and

109 (iv) gives birth to a child.

110 (e) (i) "State employer" means:

111 (A) a state executive branch agency;

112 (B) the legislative branch of the state; or

113 (C) the judicial branch of the state.

114 (ii) "State employer" does not include:

115 (A) an institute of higher education;

116 (B) the Board of Regents;

117 (C) the State Board of Education;

118 (D) an independent entity as defined in Section [63E-1-102](#);

119 (E) the Attorney General's Office;

120 (F) the State Auditor's Office; or

- 121 (G) the State Treasurer's Office.
- 122 (f) "Qualified employee" means:
- 123 (i) a parental leave eligible employee; or
- 124 (ii) a postpartum leave eligible employee.
- 125 (2) (a) Except as provided in Subsections (3) and (4), a state employer shall:
- 126 (i) allow a parental leave eligible employee to use up to 120 hours of paid parental
- 127 leave based on a 40-hour week for:
- 128 (A) the birth of the parental leave eligible employee's child;
- 129 (B) the adoption of a minor child; or
- 130 (C) the appointment of legal guardianship of a minor child; and
- 131 (ii) allow a postpartum recovery leave eligible employee to use up to 120 hours of paid
- 132 postpartum recovery leave based on a 40-hour work week for recovery from childbirth.
- 133 (b) A state employer shall allow a qualified employee who is part-time to use the
- 134 amount of parental leave or postpartum recovery leave available to the qualified employee
- 135 under this section on a pro rata basis as adopted by rule by the department under Subsection
- 136 (12).
- 137 (3) (a) Parental leave described in Subsection (2)(a)(i):
- 138 (i) may not be used before the day on which:
- 139 (A) the parental leave eligible employee's child is born;
- 140 (B) the parental leave eligible employee adopts a minor child; or
- 141 (C) the parental leave eligible employee is appointed legal guardian of a minor child;
- 142 (ii) may not be used more than six months after the date described in Subsection
- 143 (3)(a)(i);
- 144 (iii) may not be used intermittently, unless:
- 145 (A) by mutual written agreement between the state employer and the parental leave
- 146 eligible employee; or
- 147 (B) a health care provider certifies that intermittent leave is medically necessary due to
- 148 a serious health condition of the child;
- 149 (iv) runs concurrently with any leave authorized under the Family and Medical Leave
- 150 Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and
- 151 (v) runs consecutively with postpartum recovery leave.

152 (b) The amount of parental leave authorized under Subsection (2)(a)(i) does not
153 increase if a parental leave eligible employee:

154 (i) has more than one child born from the same pregnancy;
155 (ii) adopts more than one minor child; or
156 (iii) is appointed legal guardian of more than one minor child.

157 (c) A parental leave eligible employee may not use more than 120 hours of paid
158 parental leave within a single 12-month period, regardless of whether during that 12-month
159 period the parental leave eligible employee:

160 (i) becomes the parent of more than one child;
161 (ii) adopts more than one minor child; or
162 (iii) is appointed legal guardian of more than one minor child.

163 (4) (a) Postpartum recovery leave described in Subsection (2)(a)(ii):

164 (i) shall be used starting on the day on which the postpartum recovery leave eligible
165 employee gives birth, unless a health care provider certifies that an earlier start date is
166 medically necessary;

167 (ii) shall be used in a single continuous period;
168 (iii) runs concurrently with any leave authorized under the Family and Medical Leave
169 Act of 1993, 29 U.S.C. Sec. 2601 et seq.; and

170 (iv) runs consecutively with parental leave.

171 (b) The amount of postpartum recovery leave authorized under Subsection (2)(a)(ii)
172 does not increase if a postpartum recovery leave eligible employee has more than one child
173 born from the same pregnancy.

174 (5) (a) Except as provided in Subsection (5)(b), a qualified employee shall give the
175 state employer notice at least 30 days before the day on which the qualified employee plans to:

176 (i) begin using parental leave or postpartum recovery leave under this section; and
177 (ii) stop using parental leave or postpartum recovery leave under this section.

178 (b) If circumstances beyond the qualified employee's control prevent the qualified
179 employee from giving notice in accordance with Subsection (5)(a), the qualified employee shall
180 give each notice described in Subsection (5)(a) as soon as reasonably practicable.

181 (6) A state employer may not charge parental leave or postpartum recovery leave under
182 this section against sick, annual, or other leave.

183 (7) A state employer may not compensate a qualified employee for any unused parental
184 leave or postpartum recovery leave upon termination of employment.

185 (8) (a) Following the expiration of a qualified employee's parental leave or postpartum
186 recovery leave under this section, the state employer shall ensure that the qualified employee
187 may return to:

188 (i) the position that the qualified employee held before using parental leave or
189 postpartum recovery leave; or

190 (ii) a position within the state employer that is equivalent in seniority, status, benefits,
191 and pay to the position that the qualified employee held before using parental leave or
192 postpartum recovery leave.

193 (b) If during the time a qualified employee uses parental leave or postpartum recovery
194 leave under this section the state employer experiences a reduction in force and, as part of the
195 reduction in force, the qualified employee would have been separated had the qualified
196 employee not been using the parental leave or postpartum recovery leave, the state employer
197 may separate the qualified employee in accordance with any applicable process or procedure as
198 if the qualified employee were not using the parental leave or postpartum recovery leave.

199 (9) During the time a qualified employee uses parental leave or postpartum recovery
200 leave under this section, the qualified employee shall continue to receive all employment
201 related benefits and payments at the same level that the qualified employee received
202 immediately before beginning the parental leave or postpartum leave, provided that the
203 qualified employee pays any required employee contributions.

204 (10) A state employer may not:

205 (a) interfere with or otherwise restrain a qualified employee from using parental leave
206 or postpartum recovery leave in accordance with this section; or

207 (b) take any adverse employment action against a qualified employee, including
208 discharging, fining, suspending, expelling, or disciplining for using parental leave or
209 postpartum recovery leave in accordance with this section.

210 (11) A state employer shall provide each employee written information regarding a
211 qualified employee's right to use parental leave or postpartum recovery leave under this section.

212 (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
213 the department shall, by July 1, 2020, make rules for the use and administration of parental

214 leave and postpartum recovery leave under this section, including a schedule that provides paid
215 parental leave or postpartum recovery leave for a qualified employee who is part-time on a pro
216 rata basis.

217 Section 3. **Appropriation.**

218 The following sums of money are appropriated for the fiscal year beginning July 1,
219 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for
220 fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
221 Act, the Legislature appropriates the following sums of money from the funds or accounts
222 indicated for the use and support of the government of the state of Utah.

223 ITEM 1

224 To Department of Administrative Services -- Finance

225 Mandated Paid Parental Leave

226 From General Fund \$2,287,152

227 Schedule of Programs:

228 Paid Parental Leave \$2,287,152